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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Somalia

Report of the Special Rapporteur, Ms. Mona Rishmawi, submitted in accordance with Commission on Human Rights resolution 1997/47

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I. THE MANDATE

1. Following the collapse of the central Government and consequently law and order in Somalia and the 1992 widespread famine, the Commission on Human Rights, by virtue of resolution 1993/86, focused the attention of the international community on the human rights in Somalia. The resolution created a mandate for an independent expert to report on the human rights situation in Somalia and to study ways and means of how best to implement a programme of technical assistance.

2. The first Independent Expert on Somalia, Mr. Fanuel Kozonguizi of Namibia, submitted his report to the Commission at its fiftieth session (E/CN.4/1994/77 and Add.1). Following his death, Mr. Mohammed Charfi was appointed Independent Expert by the Secretary-General on 31 July 1995. He submitted his report to the Commission at its fifty-second session (E/CN.4/1996/14 and Add.1).

3. The current Independent Expert on the situation of human rights in Somalia was appointed by the Secretary-General in December 1996, following the resignation of Mr. Charfi. From 2 to 14 February 1997, she visited London, Nairobi, as well as the north-west of Somalia, known as "Somaliland". She submitted her first report to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/88). Asserting that "the Somali people must not be abandoned by the international community" (para. 85), and that "the human rights dimension of the conflict in Somalia is ignored" (para. 86), she concluded that:

> "... there are several opportunities to render useful technical assistance to Somalia in the field of human rights in particular in the area of the administration of justice. While the existence of a central government remains essential to securing a durable peace, economic prosperity and full respect for human rights, its absence should not remain a major obstacle. The emerging reconstruction initiatives and the work of the non-governmental sector must be encouraged. There is a need for a comprehensive needs-[assessment] in the field of human rights that considers not only this interim situation, but offers some future prospects" (para. 87).

4. The Independent Expert recommended that the Commission on Human Rights strengthen the examination of the human rights situation in Somalia. She also recommended that the Commission "renew its request to the Independent Expert to assess ways and means of how best to implement a programme of advisory services and technical assistance to Somalia in the field of human rights, including the administration of justice, through, inter alia, the contributions of agencies and programmes of the United Nations in the field as well as of the non-governmental sector" (para. 88).

5. In resolution 1997/47, the Commission requested the Independent Expert to report on the human rights situation in Somalia at its fifty-fourth session, in particular on the basis of a detailed assessment of the means necessary to establish a programme of advisory services and technical assistance through, inter alia, the contribution of agencies and programmes of the United Nations in the field, as well as of the non-governmental sector.

The Commission also called upon individual donor countries, international organizations and non-governmental organizations to incorporate human rights principles and objectives into the humanitarian and development work they carry out in Somalia and to cooperate with the Independent Expert.

6. In implementing resolution 1997/47, the Independent Expert has been following the human rights situation in Somalia, in particular with the view to considering ways and means to establish a programme of advisory services and technical assistance.

7. During the course of the year, two main matters required action by the Independent Expert. The first relates to the investigations that took place concerning allegations against Belgian, Canadian, and Italian soldiers while in Somalia from 1992. The second relates to the discovery of mass graves in Hargeisa, in north-west Somalia. The activities of the Independent Expert concerning these two matters and her assessment of them are also detailed in this report.

8. From 1 to 13 November 1997, the Independent Expert visited Nairobi, as well as Hargeisa in north-west Somalia, also known as "Somaliland", and Bosasso in north-east Somalia. The Independent Expert planned to visit Mogadishu as well, on 11 and 12 November 1997, but the visit had to be cancelled because of fighting in the city. During her visit, the Independent Expert had instructive meetings with the United Nations agencies working on Somalia, the Special Representative of the Secretary-General on Somalia and the United Nations Humanitarian Relief Coordinator. She also met with various foreign government representatives, international and Somali NGOs and experts. The Independent Expert is grateful to all those who aided her during her mission. She particularly thanks the staff of the United Nations Development Office for Somalia (UNDOS) in Nairobi who not only provided the logistical support for the visit, but also briefed the Expert and arranged for further consultations. Special thanks are also due to the United Nations Focal Point in Hargeisa as well the United Nations Focal Point in Bosasso. They both provided invaluable assistance.

9. The Independent Expert is grateful to the local authorities in Hargeisa and Bosasso for having cooperated fully with her. The Independent Expert values the contribution of the Somali NGOs and human rights defenders in Somalia who are operating under extremely hard conditions. Several experts on Somalia also met with the Independent Expert and shared with her their insights and knowledge. All those efforts are acknowledged with much gratitude.

10. Upon her return, the Independent Expert briefed the press on her visit.

II. THE PREVAILING SITUATION

A. The Impact on human rights of the political and security situation

11. There have been no dramatic political changes in Somalia since the last session of the Commission on Human Rights. According to the United Nations

agencies operating in the country, Somalia remains a complex emergency situation with no central government and at least 30 clan-based factions fighting there.

12. As the Independent Expert asserted in her last report, all parties to the conflict in Somalia are bound by customary international law relating to internal armed conflicts, in particular, the fundamental principles of protection contained in article 3 common to the four Geneva Conventions of 12 August 1949. Respect of humanitarian law enhances the credibility of the factions in the eyes of the international community. The reality, however, is that violence against life, in particular murder, mutilation, and cruel treatment and torture; the taking of Somalis as well as international relief workers as hostages; as well as the passing and carrying out of sentences by irregular judiciary without guarantees of fair trial and other violations of common article 3, continue to take place on a large scale in Somalia.

13. Despite efforts by various international and regional actors, including the League of Arab States, the Organization of African Unity and the Governments of Egypt, Ethiopia, Djibouti, Italy, Kenya and Yemen, to convince the major faction leaders to come to the negotiating table in Bosasso, little progress has been achieved on that front. The Bosasso Conference was scheduled several times and each time put off; the last firm dates were in November 1997, and as of 20 December 1997 no new dates had been set.

14. As for the United Nations political efforts, in October 1997, Mr. David Stephen began his new functions as Special Representative of the Secretary-General on Somalia. His Nairobi-based office is charged with encouraging the Somali factions to resolve their differences peacefully and supporting regional and other efforts towards bringing peace and stability to Somalia. Unlike his predecessor, who worked on Somalia on a part-time basis (as he had responsibility as well for the conflict in the Great Lakes region), Mr. Stephen gives his full-time attention to Somalia. The modest resources of the office of the Special Representative in Nairobi were also slightly increased. This heightened political emphasis on Somalia sends encouraging signals.

15. The political balance in the country remains fragile and unpredictable. The United Nations agencies distinguish three regional trends in Somalia 1/ with different needs and operating environments. One is the south, which is composed mainly of zones experiencing crisis. Another is the relatively calm north, which is composed of the unrecognized "State of Somaliland" in the north-west, which separated itself from the rest of Somalia in 1991, and the north-east region. Although both northern regions enjoy relative security, "Somaliland" is far ahead in terms of stability and governance. The rest of the country is composed of zones experiencing transition from crisis to recovery. According to a letter dated 12 April signed by 10 Somali figures, mainly from the Harti communities in the north of Somalia, addressed to Mr. Erling Dessau, the then United Nations Humanitarian Coordinator, it is feared that the zoning approach used by the United Nations will lead to reduced relief assistance to the areas that are perceived as less secure and may eventually lead to the partitioning of Somalia.

16. The conditions of daily life of Somali citizens are generally harsh and highly unpredictable. The south of Somalia is particularly difficult and continues to experience serious crisis. This area is still controlled by faction leaders, militias and other irregular armed groups. There is lawlessness, as the lines of command between the faction leaders and the individuals carrying weapons are sometimes loose. Mogadishu is a city divided between the faction of Mr. Ali Mahdi Mohammed and his allies who control the north of the city and Medina, and the faction of Mr. Hussien Aidid and his allies, who control south Mogadishu. The Independent Expert planned to visit Mogadishu from 11-12 November, but the visit was cancelled due to the security crisis in the city allegedly caused by the killing of Mr. Aidid's major military aids. Kismayo, another port city in the south, and its surrounding area is controlled by another powerful faction leader and a former military commander of former President Siad Barre, General Morgan.

17. In recent months, there has been much concern expressed about the fate of civilians in and around the town of Baidoa, north-west Mogadishu. On 12 October 1997, the militias of Mr. Hussien Aidid entered Baidoa. Since then the town has been isolated. Lawlessness, crime and revenge slayings are widespread. There are allegations that about 60 villages in the area were burnt. The population fled, thereby contributing to the number of internally displaced in Somalia. In June, a Portuguese doctor working with Médecins sans frontières (MSF) was assassinated in the town's hospital, as described below. This has led to the withdrawal of all the international relief agencies from Baidoa.

B. Attacks against humanitarian workers

18. Although the magnitude of the crisis in Somalia requires much emergency relief, there is little international presence inside the country, owing to kidnappings, banditry and looting. Foreigners can move about in most of Somalia only if escorted by hired Somali armed guards. Various international bodies run some programmes in Somalia, but the organizations themselves are based in neighbouring countries, mainly in Kenya. There is more international presence in "Somaliland" and agencies such as United Nations Office for Project Services, United Nations Children's Fund, Office of the United Nations High Commissioner for Refugees and World Food Programme have regular staff there. International NGOs such as Oxfam also run regular programmes in the area.

19. During 1997, disturbing attacks against international humanitarian workers hampered relief efforts in some parts of Somalia. The Independent Expert is particularly disturbed by the assassination on 20 June 1997 of 35-year-old Dr. Ricardo Marques of Portugal, who worked with MSF in Baidoa. While doing his regular rounds in Baidoa hospital, two armed men opened fire on him in front of numerous witnesses, including patients and hospital staff. The killers were able to leave the hospital without hindrance. Another foreign doctor who was accompanying Dr. Marques escaped. The reasons for the murder are unknown. As a result, MSF decided to suspend its activities in the towns of Bardera, Biado and Tiaglo.

20. The Somalia Aid Coordinating Body (SACB), which is comprised of donors, United Nations agencies, international NGOs, and other international

organizations, reacted firmly to the killing. It declared on 24 June 1997 that while the events leading to the incident remained unclear, the threats against aid personnel, summary executions and murders were totally unacceptable and would not be tolerated under any circumstances. SACB demanded that the relevant local authorities act expeditiously to bring the perpetrators of the crime to justice. Meanwhile, it recommended the withdrawal of all aid agencies from the region with immediate effect and the suspension of all activities. As a result, all humanitarian agencies did withdraw.

21. MSF informed the Independent Expert that the organization met several times with Mr. Aidid and his staff to clarify the situation. Mr. Aidid stated that he would conduct a full investigation into the matter and would inform MSF of the results. As of 5 November 1997, however, no report had been sent to MSF on the investigation.

22. The Independent Expert adds her voice to all those who condemned this outrageous act, which not only brutally took away the life of Dr. Ricardo Marques, but also led to the denial of humanitarian assistance to all those who live in the area. The Independent Expert reminds the leaders controlling the area that violence against life, in particular murder, mutilation, and cruel treatment and torture, is absolutely prohibited under common article 3 of the Geneva Conventions. This provision is absolutely binding on the Somali warring factions. The Independent Expert also takes this opportunity to recall that common article 3, which embodies the fundamental principles in international humanitarian law applied to internal armed conflicts, prohibits, inter alia, "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording the judicial guarantees which are recognized as indispensable by civilized people".

23. Aid workers have often been targeted by Somalis. Several were kidnapped. Among the latest incidents this year was the taking of five United Nations aid workers in November at gunpoint from a boat on the coast of El Ayo, in "Somaliland". They were later released. In September, unidentified armed men reportedly kidnapped the Somali head of the World Food Programme as he was leaving a mosque in Mogadishu after prayers. He was released three days later. In July, an American aid worker was reportedly kidnapped in central Somalia, but escaped unharmed the same day. Aid workers are kidnapped either for ransom, or sometimes because the Somalis working with them are dissatisfied with their contracts or salaries. In this context, the Independent Expert also recalls that hostage-taking is absolutely prohibited under common article 3.

24. Another incident of concern is the attempted shooting of the United Nations Humanitarian Coordinator and the staff accompanying him during their visit to Mogadishu in October 1997. Apparently, the incident took place as the Coordinator was crossing the "green line" in Mogadishu accompanied by a Swiss television crew. The incident occurred despite prior security clearance from the factions on both sides of the "green line".

C. Landmines

25. Another serious problem in Somalia is landmines. According to information given to the Special Rapporteur, more than 8 million anti-personnel mines were bought by the previous Government in 1988. After the collapse of the central Government, the mines have been used by the warring factions. The United Nations agencies estimate that 1 million mines remain scattered all over Somalia. 2/ They are believed to be in the north-west, the north-east, the central regions along the Somalia-Ethiopia border, Gedo and, most recently, in and around the conflict areas in southern Somalia. The mines are laid around the main towns, strategic farmland and grazing areas, and along commercial routes to and from these towns.

26. The mines seriously affect the civilian population, particularly children. In addition to killing and maiming, the mining of Somalia has hampered relief work and international assistance. For instance, because half of the town of Burao, in north-west Somalia, is mined, it was impossible for the staff of the United Nations Office for Programmes and Services (UNOPS) to rehabilitate the buildings in the town. Landmines also hinder the use of farming and grazing areas and thereby contribute to the deterioration of the basic conditions for survival within the country.

27. The international community has finally recognized the brutal effect of this anti-personnel weapon. Some 125 countries, meeting in December 1997 in Ottawa, Canada, signed the treaty banning them.

28. Effort is needed to aid Somali in this field and to respond to the calls of the communities who request the help of the international community in their de-mining efforts. The United Nations Operation in Somalia (UNOSOM) sponsored a mine-clearance project, which was stopped when UNOSOM left Somalia. The Department of Humanitarian Affairs, UNESCO and WFP proposed a joint programme to address the mining problem from various angles, including mine-awareness education and the actual de-mining of areas. Despite being crucial, it seems that, due to lack of funding, the project was not implemented.

D. Refugees and internally displaced persons

29. The areas in the south, which had already had an influx of internally displaced persons, were affected by the unusually heavy rain and floods in November and December 1997. According to the United Nations agencies, as of 19 December 1997, the total number of displaced persons was at least 230,000 and the number of people remaining at risk was approximately 1 million. The number of people reported to have died reached 1,904 as of 6 January 1997.

30. The massive population movements within Somalia and to neighbouring countries in recent years indicate that most Somalis are either refugees in countries such as Djibouti, Ethiopia, Kenya and Yemen, or are displaced within their own country. Although most Somalis are nomadic people, and therefore are normally often on the move, the irregular and less predictable movements in response to the fighting, or natural disasters such as drought or heavy rain, have created a humanitarian emergency of extreme magnitude. While UNHCR

deals with the refugee problem and facilitates the voluntary repatriation of refugees to north-west and north-east Somalia, there is no agency with a specific mandate to deal with the internally displaced.

31. The recent rains and floods highlighted how ill-prepared the millions of the internally displaced Somalis are to face severe natural or man-made disasters. They live without adequate food, shelter, running water, electricity, and basic health care. Such a situation constitutes a recipe for other humanitarian crises, such as the outbreak of diseases like cholera, diarrhoeal diseases and malaria.

32. This situation is exacerbated by the lack of an adequate information system in the country, especially in rural areas. The road network is basic. There is an elementary and inadequate telecommunication system. Very few international personnel are present inside the country. This makes it very difficult to be alerted to crisis and to organize the necessary response.

33. The lack of an adequate response on the part of the international community to the internally displaced crisis exacerbate the refugee problem. As refugees receive systematic relief assistance from UNHCR, while the internally displaced receive only at best irregular help in times of crisis, there is little incentive for Somalis to remain within the borders of Somalia, or to be voluntarily repatriated, even to the safe zone. In order to survive, some leave part of their families in the refugee camps in order to receive assistance and support the rest of the family. This exploitation of refugee status creates a burden on the Government hosting the refugees and hampers solution of the genuine refugee problem. A better response to the problem of the internally displaced can ease the refugee problem and stabilize the population within their own country.

34. International relief agencies, such as UNDP in Somalia, argue that although they are willing to enhance their efforts to aid the internally displaced, there is little interest from the donor community in such programmes. When populations cross borders, the neighbouring countries pressure the international community to share some of the burden. As a result, Governments are willing to support financially an influx of refugees, but not internally displaced. This contributes to creating more refugees. To avoid exploiting refugee status, better responses should be designed for the internally displaced. Most refugees and internally displaced are women and children.

E. Impact of the Somali conflict on the rights of the child

35. As Somalia has no central Government, it is one of only two countries in the world that have not acceded to the Convention on the Rights of the Child. 3/ Yet, UNICEF has an active presence in the country. Its programme includes activities on health and nutrition for children, education, immunization (with WHO), and dissemination of information on the rights of the child.

36. Among the main problems in Somalia are child soldiers. According to UNICEF, Somali society considers the age of maturity to be 15. At that age,

children may carry weapons ranging from knives to guns. Consequently, in conflict areas such as southern Somalia, most of the male population, including children from the age of 15, carry weapons.

37. As a result of the disintegration of the central Government, essential services such as health and education also collapsed. The situation is particularly difficult in the conflict areas. UNICEF is active in promoting children's health, nutrition, and education. It has been particularly active in improving drinking water through chlorination. More services can obviously be provided in the more stable areas. In "Somaliland", for instance, UNICEF has supported the functioning of 7 regional hospitals with 30 medical doctors, 170 qualified nurses and 40 midwives. It also supports 160 primary schools educating 27,000 students. It trained more than 500 primary school teachers. Some Governments and foundations also provide similar services in other parts of Somalia. In addition to UNICEF, Egyptian doctors and teachers are active in Bosasso. These commendable efforts are far from being comprehensive, however, due to the fragile security situation in the country.

38. The girl child is particularly affected by the widespread practice of female genital mutilation. Most, if not all, young Somalia girls between the age of 10 and 13 undergo a circumcision process. Traditional and basic tools are used to mutilate the girls. As a result, serious consequences, from bleeding to infections, could lead to death. Somali women continue to suffer the consequences of this practice throughout their lives: in marriage, pregnancy and delivery. There are several programmes seeking to inform Somali women about the adverse consequence of this practice. Yet, this cultural practice is carried out with little hesitation. The lack of a central Government makes it difficult to carry out systematic work to modify such social and cultural patterns.

F. The status of women

39. Most Somali men have been involved in the fighting. Many were killed, or became refugees or internally displaced persons. As the family unit lost its male traditional economic providers, Somali women stepped in to support their families. This has turned many Somali women into heads of household.

40. Prior to the war, the central Government was the main Somali employer. With its collapse, civil servants lost their jobs, and therefore their income. New ways to generate income had to be found. Some resorted to banditry and looting. Some joined the militias. Women had to step in. As job opportunities were scarce, Somali women started to perform work that many men, who were used to while-collar jobs, considered demeaning. This included the selling of the drug kat, running small coffee shops and trading. This new role assumed by women gave them slightly more power in the family.

41. There is much effort to empower women in Somalia, specially in the economic field. Several international programmes run by United Nations-sponsored groups, as well as international NGOs, provide Somali women with seed-money to start income-generating programmes. There are programmes to train women in various fields. They include training in new skills such as the tie and dye programme in Bosasso carried out by the Nairobi-based Africa Refugees Foundation, and the marketing and accounting workshops organized by

Oxfam in Hargeisa. Such international support has led to the establishment of numerous women's groups in Somalia. There is a great deal of competition among these groups, specially with regard to funding.

42. However, as the jobs they perform are considered by men to be demeaning, the new role that the women assumed did not radically change their status in society. When political discussions concerning the future of Somalia take place, women are excluded. When the first elections were held in "Somaliland", women were not given the opportunity to compete as candidates, or even given the right to vote. Women still inherit half the share of their male relatives. Polygamy is widespread and violence against women within the household is common. Most, if not all Somali women are circumcised.

43. Paradoxically, women play a major role in keeping up the traditions that have adverse impacts on them. Although Somali women struggle for a greater role in public life, they do not question the rules that lead to the debasement of their status in private life. For example, they accept and defend the institution of polygamy which is very widespread in Somalia, as well as female circumcision. As part of their effort to hold their communities together, they maintain and defend customs and traditions that have negative impacts on their status, health and personal growth.

G. The justice system

44. Despite the general state of lawlessness in most of Somalia, law still plays some role, particularly in deterrence and punishment. In her last report the Independent Expert described the system of justice in Somalia (E/CN.4/1997/88, paras. 46-52). This description remains valid. As the Independent Expert stated, there are no uniform rules governing private, social or economic behaviour in Somalia today. With the disintegration of the State apparatus in Somalia, the legal, judicial and law enforcement systems also collapsed. Various communities in Somalia apply different rules. These rules are based on either the traditional system, Sharia law, or Somali law that was applied during former President Siad Barre's regime, or before Mr. Barre's takeover in 1969, or a mixture of all or some of these.

45. The Independent Expert was informed by some Somali jurists that the first Somali laws following its independence were drafted with the assistance of the United Nations Trusteeship Council. United Nations legal experts from Egypt, Pakistan, India and Italy took part. As a result, Somali laws are a mixture of different legal systems.

46. Except for a short period in its history following its independence, the Somali public had little confidence in the judiciary. After the independence of Somalia in 1960, an elaborate court structure was created. It consisted of a High Court, an appeal court in each district, and district and magistrate courts in the major towns. There were no Sharia courts, and personal status disputes were resolved by the regular judges. The judiciary was largely considered independent.

47. After President Siad Barre took over in 1969 in a military coup, a pattern of political repression and gross violations of human rights developed. Separation of powers was removed and the judiciary was subjugated

by the executive. A National Security Court was created, composed of military and civilian judges, who were civil servants. The intelligence services assumed wide arrest, search and investigation powers. Torture became widespread and thousands of individuals were placed under administrative detention without charge or trial. Grossly unfair trials that led to executions were common, and extrajudicial executions were not unusual. The judiciary was mostly corrupt and those judges who opposed Barre's system were removed or, in some cases, even executed.

48. Although the clan system was banned during the pre-independence period and in the first nine years after independence, Mr. Barre revived the clan system soon after his takeover. The reason was to provide him with a social tool to divide and rule in order to generate support for his regime. Before independence, the traditional system had little legal effect; a traditional settlement was considered a mitigating factor in criminal matters.

49. As confidence in the regular judiciary declined, the traditional system, specially with the rise of the clans, gained momentum. As Somalis are generally nomadic people, the traditional system provided a more efficient way to resolve conflicts. The essence of the traditional system is material compensation for wrongdoings. The system acts fast and enforcement is immediate and swift. In personal status matters, Sharia law also gained momentum.

50. The regime of Siad Barre took some steps that were favourable to women. His laws, for example equated men and women in matters of inheritance, and allowed women to serve as judges and jurors. As the system as a whole was considered dictatorial, these improvements were rejected by the majority of the population.

51. As a result of this complex and unfortunate history, many Somalis have very little confidence in secular rules. Many Somali jurists whom the Independent Expert met considered that in personal status matters, as well as in some criminal matters, Sharia, as well as the traditional system, must prevail. The effort needed to restore confidence in the idea that a regular, effective, qualified and independent judiciary is capable of dealing with the requirements of today's world and of enforcing human rights, will be enormous.

52. The law is currently enforced either by clan elders, the militias, or the militias of the Sharia courts. The prison in north Mogadishu reportedly has poor conditions. The International Committee of the Red Cross visits the prison in south Mogadishu.

III. THE VISIT TO HARGEISA

53. From 5 to 9 November 1997, the Independent Expert visited Hargeisa, in north-west Somalia, in the unrecognized breakaway "State of Somaliland". "Somaliland" is among the most organized and stable parts of Somalia. The Independent Expert noted the improved security and the more relaxed atmosphere in Hargeisa during her November 1997 visit. The airport near the town is now open. This airport was not functioning during her February 1997 visit due to

security reasons. Because of the improved security conditions, there are at least eight United Nations agencies, and 12 international NGOs working in Hargeisa.

54. The aim of the visit was two fold:

(a) To examine the information related to the uncovering of mass graves in Hargeisa which was brought to the attention of the Independent Expert in June 1997; and,

(b) To examine the human rights situation in the area, in order to recommend to the Commission on Human Rights ways and means to provide technical cooperation.

55. While in Hargeisa, the Independent Expert met the various United Nations agencies operating in the region. She also met with the local authorities, including the head of "Somaliland", Mr. Mohammed Ibrahim Egal. The Independent Expert also met with the coordinator of the committee on the mass graves, Mr. Ahmed M. Silanyo, as well as the head and members of the technical committee. She visited the police headquarters and the Supreme Court. The Independent Expert greatly appreciates the spirit of full cooperation that she met with in Hargeisa.

56. The Independent Expert met with international and Somali NGOs as well as human rights defenders. Experts on Somalia also met with the Independent Expert and shared with her their insights and knowledge. All these efforts are acknowledged with much gratitude.

A. The mass graves

57. In May 1997, heavy rain in Hargeisa uncovered a site believed to be a mass grave containing the bodies of at least 250 individuals. The corpses were bound by the wrist in groups of 10 and 15. They were believed to have been killed by the forces of the President Siad Barre in 1988. The site is located next to a military camp which was used by Mr. Siad Barre's troops.

58. The local authorities reburied the bodies and contacted the Independent Expert seeking assistance. Because of the seriousness of the allegation and the lack of local expertise to deal with it scientifically, the Independent Expert immediately contacted the Office of the High Commissioner for Human Rights. The Office authorized her to visit the area in November 1997 as well as the sending of two international forensic experts from the Boston-based organization Physicians for Human Rights in December 1997, described below.

59. While in Hargeisa, the Independent Expert met with the committees charged with this situation. She also visited the site and met with alleged survivors of the killings as well as independent sources who attended the reburial services. She also saw pictures of the uncovered bodies taken by independent sources. The pictures confirmed that the individuals were buried in full civilian clothes with their shoes on, contrary to Islamic custom. In fact, remains of the civilian clothes of men, women and, perhaps, children are still in the open on the site. The pictures and witnesses also confirmed that the individuals were bound by the wrist in groups of 10 and 15.

60. The Independent Expert heard in "Somaliland", as well as outside it, two contradictory allegations concerning the identity of those killed and their killers. One version is that the bodies are those of civilians as well as members of the Somali National Movement (SNM) who were captured by the Siad Barre forces in 1988. The SNM is one of several armed movements that fought against the Barre regime. It was composed mainly of members of the Issac clan, who lived mainly in the north-west and were persecuted by the Barre regime. The SNM was initially based in Ethiopia, and after the Government of Ethiopia became more friendly with Siad Barre, SNM fighters marched towards the north-west of Somalia and captured Hargeisa. The Barre regime acted with extreme brutality, indiscriminately shelling Hargeisa. Allegations, supported by credible human rights reports at the time, state that the Barre soldiers summarily executed the military personnel and the civilians whom they captured. There are allegations that several mass graves in addition to the uncovered site exist in the north-west dating from that era.

61. Other sources claim that these mass graves contain the bodies of Ethiopian refugees who were given refuge in the area by the Barre regime and later killed by the SNM. The Ethiopian refugees supported the Barre regime, and there are claims that they were even armed by him. There is no doubt that there was much resentment between the refugees, who were supported by the international relief agencies as well as the Somali Government, and the much deprived and suppressed local population. The story that those killed were refugees murdered by the SNM does not seem to have much credibility, however, and is not supported by the experts.

62. The Independent Expert believes that it is essential that the truth about what happened become known. The appropriate action in this regard has to be taken in the context of the current reality in Somalia. The conflict in Somalia is ongoing and the system of governance, including judicial institutions and law enforcement, has collapsed. Although several names of those possibly responsible for the killings are mentioned, the massive population movements within Somalia, as well as the impossibility for independent experts to move freely in Somalia for security reasons, will make collecting testimonies about the identities of those killed and their killers very difficult.

63. Consequently, the Independent Expert believes that the most essential work at this stage is to preserve the evidence for its possible use at a later stage. If these are mass killings, they will constitute a crime against humanity which is not subject to a statute of limitations, according to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. She therefore believes that it is essential that local Somali expertise is strengthened, especially with regard to preserving evidence, until the time is appropriate for full and comprehensive investigations into these claims to be carried out and the perpetrators brought to justice. This is essential as the world is now moving towards the establishment of a permanent international criminal court to try those accused of committing genocide, war crimes and crimes against humanity.

64. As stated above, two international forensic experts from Physicians for Human Rights visited the area at the end of 1997. Their mandate was to

undertake all the necessary tasks pertaining to determination of the nature of the graves and to conduct a preliminary assessment of the condition of the remains and the types of injury to the bodies; to conduct a one-day workshop for local authorities and NGOs to provide them with basic information on how to determine whether corpses discovered in a mass grave are the result of a massacre and how to preserve evidence; and to report to the Independent Expert on their findings upon completion of the project.

B. The police

65. The Independent Expert noted that there are now more uniformed forces carrying out regular police functions in Hargeisa. At the headquarters of the police in Hargeisa the Independent Expert was informed about the structure of the police in "Somaliland" and about the activities of the department to integrate the militia into the regular police force. She raised the case of a Somali-American who was abused by the police in Hargeisa and she learnt about the action that the police took to remedy the situation.

66. There is currently a regular police force in "Somaliland". Although still weak, it has been playing an important role in ensuring peace and security and carrying out daily law enforcement activities. The police force is structured as follows. At the head of the force is the Police Commissioner. Below him is his Deputy Commissioner. There are two branches: the Criminal Investigation Department and the Immigration Department. The Criminal Investigation Department has the following branches: transport and communication, personnel, operations (with stations in Awdal, Hargeiysa, Burao, Sool, Sanaag, as well as mobile police), logistics and finance, and training and planning. Policing in some of these areas is contested as Mr. Egal's control of the area is not absolute.

67. The strength of the police force is 4,000 individuals. Some came from the militia and 25-30 per cent are former policemen. There are training programmes before enrolment in the regular police force, followed by a selection process. This training course accommodates 120 persons per one-month session, with an additional level of training for officers. Each officer training programme consists of 33 officers and lasts for 45 days. The old teaching materials are used. The subjects covered include basic police duties, criminal law, public order law, community policing, human relations, human rights and constitutions, criminal investigations, prevention of crime, and police patrolling. The Independent Expert gave the training unit the manual prepared by the Office of the High Commissioner for Human Rights for training the police. 4/

68. There are new courses scheduled for the integration of the militias. There will be three courses with 150 trainees each, one course with 180 participants, and one course for 186 participants. There is also one course scheduled for 22 traffic policemen and one course for 22 detectives. This work is being carried out with no international assistance. Policemen will be selected from among the participants in these courses.

69. The police have holding centres within the police stations. The regular prisons are under the Justice Department. There are allegations that individuals are kept in prison for periods exceeding their sentence.

70. The Independent Expert raised the case of Keise Yousuf Ali (Hussein) with the Police Commissioner during her meeting with him on 6 November 1997. Mr. Ali is a Somali and a United States citizen who was apparently beaten and injured by the police in Hargeisa on 27 October 1997. He said that he sustained serious injuries. The dispute apparently related to municipal affairs and a building licence. The Police Commissioner shared with the Independent Expert an internal communication dated 2 November 1997 from the Police Commissioner to Hargeisa police requesting them to investigate the matter and to inform him. The Independent Expert was later informed by the police that two policemen had been arrested and were awaiting trial. During her meeting with Mr. Egal, the Independent Expert told him that the police seemed to be handling the matter properly and that they should be encouraged to continue to take human rights violations by members of the police force seriously and to bring the perpetrators to justice.

C. The justice system

71. In her last report, the Independent Expert outlined the functioning of the judiciary. The Independent Expert explained that while there is a functioning judiciary in "Somaliland", this judiciary is weak and lacks adequate human and material resources. The Independent Expert provided to the Supreme Court copies of the United Nations Human Rights Fact Sheets and other relevant documents.

72. During her November 1997 visit, the Independent Expert visited the court in Hargeisa and met with the current head of the judiciary, Mr. Othman Hussien Khairi. She was informed that there are currently 55 judges in "Somaliland", operating in four regions and 18 districts. In each region there is a court of appeal and a district court. Out of the 55 judges, 17 have legal training from universities such as Al-Azzhar in Egypt, Cairo University and Mogadishu University. The rest of the judges are former clerks and other court personnel. Some came from the police. Those without legal training were apparently admitted following an examination. The head of the judiciary said that essential programmes were being conducted to train judges. During his meeting with the Independent Expert, Mr. Egal requested that qualified Arab judges be provided to "Somaliland" to help enhance its judiciary. Discussions are taking place on introducing the jury system in Somalia.

73. There have been at least four heads of the judiciary and three attorneys-general appointed in Hargeisa since it broke away from Somalia in 1991. Most of the appointments were apparently made on a temporary basis. The current head of the judiciary stated that his appointment is now permanent after having been approved by the legislative body, the Congress.

74. In the past, women served as judges. Currently, there are no women in the judiciary except in administrative functions. There is apparently no legal prohibition preventing women from serving as judges.

75. The laws which were enacted prior to the 1969 takeover by Siad Barre are now in force in "Somaliland". These laws are an amalgamation of different legal systems. "Somaliland" has now adopted a lengthy constitution of 156 articles, which subjects rights and laws to Sharia. One of the most important

areas where Sharia law is applied is rules of evidence. The traditional system also often supersedes the regular legal system, as stated above.

76. The judiciary does not, however, play its rightful role in protecting human rights. Three members of the widely read paper Jamahuuriya were apparently incarcerated for a total of 74 days without being brought before a judge. The case was apparently brought to court twice and postponed both times. Although the three were released on bail after 29 days of detention, a week later they were rearrested. The arrest followed the publication of an opinion piece on 3 July 1997 concerning alleged mismanagement of public funds and corruption. The Independent Expert intervened on their behalf when the matter was brought to her attention in December 1997.

D. Other issues

77. There are two human rights groups working in Hargeisa which greatly aided the Independent Expert: the Horn of Africa Human Rights Watch Committee and the Guardians for Civil Liberties. These small groups monitor the human rights situation in the area, intervene with the authorities on violations of human rights, and provide some basic legal advice and aid. They operate with very little resources. The Independent Expert provided some relevant United Nations human rights documents to these two groups. The provision of a fax machine for each group could be extremely useful to help them communicate with the outside world. There are also women's groups, social groups and international NGOs that are interested in integrating human rights problems into their work. Such efforts should be encouraged.

78. While in "Somaliland", the Independent Expert met with the head of the Commission on Land Mines. He raised the serious question of landmines in "Somaliland" and the weak international effort done on de-mining. He also requested international law material related to this issue. In cooperation with the International Committee of the Red Cross (ICRC), the Independent Expert provided some ICRC publications on landmines. International relief workers in Hargeisa also raised the problem, highlighting its seriousness, the importance of de-mining the area and conducting awareness campaigns.

IV. THE VISIT TO BOSASSO

79. From 9 to 12 November 1997, the Independent Expert visited Bosasso in north-east Somalia. This was her first visit to that part of the country. The Independent Expert is grateful to the regional and local authorities who extended their support and cooperation to her. She is also grateful to all the Somali individuals, men and women, who spared time to meet with her. The Independent Expert is grateful to all the United Nations agencies which operate in Bosasso. Thanks are particularly due to the United Nations Focal Point.

80. The Independent Expert visited Bosasso in the middle of the rain and floods. Although the northern areas of Somalia were less affected than the southern areas, there was a visible effect on the region. The streets, which are mostly unpaved, were filled with muddy water. Children were playing with the water, which was mixed with sewage. This is a recipe for health disasters. The Independent Expert regularly saw people trying to clear the

water out of their houses. A dispute arose when some individuals placed a huge stone in the middle of the road to prevent the water from entering their premises, blocking the street. Those who wanted to use the street tried to remove the rock. This angered those who had placed the rock and a fist-fight took place.

81. The most affected by the rain were the internally displaced. Bosasso hosts tens of thousands of internally displaced persons. Their exact number is unknown. They constitute about one third of the city's population. The internally displaced live under very difficult conditions with no adequate shelter or facilities for survival. They also place a major burden on the population of the town. Somalis move to Bosasso because of its relative security.

82. As already stated, there is little assistance or relief work for the internally displaced. When the Independent Expert raised this question with a high United Nations official, she was told that this was due to a lack of donor interest in the matter. As a result, many internally displaced prefer that part of their family become refugees by crossing the border to a neighbouring country such as Yemen and Kenya in order to be eligible for a refugee status and to be assisted by UNHCR. They share this assistance with their relatives in Bosasso.

83. The Independent Expert notes that there is a nucleus of regional and local administration in Bosasso. Unlike the administration in Hargeisa, the authorities in Bosasso support the unity of Somalia. The Independent Expert visited the offices of the regional as well the local authorities and met with the leaders. Useful information was shared with her. The regional authorities in Bosasso are responsible for the security and defence of the three regions of Bari, Nugaal and Mudge. Although there are many armed men, only some of them were in uniform.

84. There is some effort under way to rehabilitate the militias in Bosasso. The Independent Expert visited a rehabilitation camp. The training is carried out by individuals who had served in the Somali police force. It is essential that the militias are rehabilitated and that they have an incentive to join a regular police force. This important activity gets little recognition and support from the international community.

85. The Independent Expert visited two holding centres in the police station of Bosasso. She also inspected the police records. She noted that on 10 November 1997, 26 persons were arrested and 11 were released; on 9 November 1997, 31 persons were arrested and 9 released; on 8 November 1997, 26 persons were arrested and 6 released; on 7 November 1997, 28 persons were arrested and 7 released; on 6 November 1997, 25 persons were arrested and 4 released. This indicates that there is active law enforcement work in Bosasso.

86. At the same time, prisoners are held in extremely difficult conditions. There are two rooms to hold prisoners, each of 20 square metres. This space is used to hold approximately 16 men. The rooms have very small windows. The toilets are outside and there is no running water. The detainees sleep on the

floor. The police provide some food and allow the families to bring food for the detainees. There are also women prisoners. They are held in the courtyard of the holding centre.

87. The authorities themselves understand that these facilities are highly inadequate. They initiated a project, which is supported by the United Nations Conference on Trade and Development and the European Commission, to build a new modern prison. The Independent Expert visited the new facilities and was impressed with how it was structured. The new facilities have the potential of holding prisoners in a manner that satisfies the United Nations Standard Minimum Rules for the Treatment of Prisoners. However, these facilities cannot be utilized at present because there is neither running water in the area nor electricity. The Independent Expert believes that it is essential that the completion of this project is supported. For a secure Somalia, there is a need for law enforcement. Facilities such as humane prisons are essential to avoid the resort to deterrence measures such as corporal punishment.

V. PROSPECTS FOR TECHNICAL COOPERATION

88. There are several possibilities for building a nucleus for human rights work in Somalia. This work will not only advance peace and stability in the country, but also pave the way for respect of human rights in the future. Below is an outline of areas where the Independent Expert believes there is room for useful work to be done to bring about a better appreciation of and respect for human rights in Somalia. These proposals are deliberately modest, as the situation in Somalia, as described above, is difficult and complex. They can, however, lead to concrete results.

A. Support for Somali human rights defenders

89. Despite the difficult conditions, there are Somali human rights groups. Two Somali groups exist in "Somaliland" and one in north Mogadishu. The Independent Expert was impressed with the work of the groups in Hargeisa. They provided her with useful analyses and information. The groups operate under very difficult material conditions and with few resources. The Independent Expert provided these groups with some United Nations documentation in the field of human rights, including reports, fact sheets and training manuals. The Independent Expert aimed at visiting the Dr. Ismail Juma'le Human Rights Organization in north Mogadishu. The security situation in Mogadishu unfortunately did not allow this visit to take place. This organization, too, through its Dr. Ismail Centre for Human Rights, can make good use of United Nations documents in the field of human rights. These groups should be actively supported.

90. Amnesty International has been carrying out a commendable effort to train Somalis in monitoring human rights violations.

B. Integrating human rights into the work of the United Nations agencies

91. In his report "Renewing the United Nations: a programme for reform", the Secretary-General directed that human rights be integrated into the work of United Nations agencies. The Secretary General charged the High

Commissioner for Human Rights with undertaking an analysis of the technical assistance provided by the United Nations entities in areas related to human rights and formulate proposals for improving complementarity of action (A/51/950, para. 201 Action 15 (b)) .

92. Some United Nations agencies have started commendable efforts in this regard. For instance, as part of its project on legal awareness and the judiciary, UNDP Somalia is planning to use the services of a human rights expert for three to six months. The aim of the programme is to develop strategies to strengthen the understanding of international human rights norms among the groups currently interpreting the legal system as well as the general public. The Office of the High Commissioner should assist in this task.

93. The Office of the High Commissioner should also provide practical assistance to the various United Nations agencies on how to integrate human rights into their work. This point was raised twice, once during a meeting with the various agencies organized by UNDP in Nairobi, and second during the Independent Expert's visit to Bosasso. The Independent Expert feels that it is essential to translate talk into actual practice. For instance, UNESCO has a useful programme on civic education, peace and good governance. The programme has several components. It would be useful for the Office of the High Commissioner to see that human rights is integrated into this programme. UNICEF also has several programmes with a human rights dimension.

C. Programmes for women and law enforcement agencies

94. As stated earlier, women currently play a major role in Somali civil life; in fact, they are Somalia's civil life. Programmes that could introduce women's groups to human rights concepts could lead to concrete results.

95. The efforts to rehabilitate the militias and create law and order should be fully supported. The Office of the High Commissioner should find ways to support the various law enforcement training that is taking place in Somalia and to introduce human rights concepts in the country.

VI. ALLEGATIONS AGAINST BELGIAN, CANADIAN, AND ITALIAN TROOPS

96. During the course of 1997, the media reported on alleged violations of human rights and humanitarian law committed by the international forces that were present in Somalia from 1992. In addition to the reports of violations by Canadian soldiers that led to the establishment of a Commission of Inquiry into the Deployment of Canadian Forces in Somalia, allegations against Belgian and Italian troops also surfaced.

97. With regard to her mandate, the Independent Expert believes that it is essential for the credibility of international action in the field of human rights in Somalia that these allegations are fully investigated, the complete truth about the behaviour of the international troops in Somalia is revealed, and all the perpetrators of unlawful acts are brought to justice. In addition to the legal obligations imposed on States to respect international law, it is essential that proper action is taken with regard to the alleged violations of international law by the international forces because the international

community ought to send positive signals to and set correct examples for Somalis with regard to maintaining full respect of human rights and humanitarian law. Impunity should not be tolerated. Otherwise, the international community has little moral standing when requesting Somalis to preserve these very fundamental values.

98. Consequently, the Independent Expert wrote on 10 October 1997 to the Governments of Belgium, Canada and Italy, through their Permanent Missions to the United Nations at Geneva. In her letter, the Independent Expert cited the press reports that soldiers of those countries while in Somalia had committed, inter alia, acts of summary execution, torture and other cruel, inhuman or degrading treatment or punishment, and violence against Somali civilians. The Independent Expert recalled that it was reported that inquiries into those allegations had taken place and that a number of soldiers were brought to trial. In order to have a more accurate and comprehensive view of the events, the Independent Expert requested information on the above-mentioned claims and any other details or observations which each Government deemed appropriate by the end of November 1997.

99. On 22 October, the Permanent Mission of Belgium acknowledged receipt of the Independent Expert's letter stating that it had transmitted it to the relevant authorities in Brussels. As of 31 December 1997, no further communication was received from the Government of Belgium. On 2 December the Government of Italy submitted its response to the Independent Expert. The Italian position is outlined below. On 10 December 1997 the Government of Canada responded.

A. Background

100. The United Nations involvement in Somalia started with the United Nations Operation in Somalia (UNOSOM I), established on 24 April 1992 by Security Council resolution 751 (1992). UNOSOM I was later succeeded by the Unified Task Force (UNITAF). On 3 December 1992 UNITAF was authorized by the Council in resolution 794 (1992), acting under Chapter VII of the Charter, to use "all necessary means" to establish a secure environment for humanitarian operations in Somalia. On 9 December 1992, UNITAF forces landed in Mogadishu in full combat gear.

101. Following a transitional period, an expanded United Nations Operation in Somalia (UNOSOM II) was established on 26 March 1993 under Security Council resolution 814 (1993). In addition to disarming Somalis, it had the ambitious mandate of re-establishing political structures in the country and nation building. The mandate of UNOSOM II in Somalia terminated in March 1995. Peace was not restored in the country and no viable and lasting structures were created when disturbing information with regard to actions of the international forces started to surface.

102. It is instructive to examine the legal responsibility of the States contributing international troops under international law. Regardless of the debate on the applicability of international humanitarian law to the forces deployed by the United Nations, it should be here stated that if States Members of the United Nations are authorized by the Security Council to undertake military activities but are not acting under the direct command and

control of the United Nations, then the individual participating State is at least responsible for the action of its soldiers. 5/ The States that contribute troops are hence bound by the provisions of international humanitarian law and human rights law, whether customary or treaty-based law.

103. It is useful to set out here the thrust of the legal framework related to the behaviour of international troops. First, article 1 and article 2 common to the four 1949 Geneva Conventions contain fundamental principles that are considered as forming customary international law and therefore binding on all States. 6/ All the Governments that contributed troops in Somalia are High Contracting Parties to the four Geneva Conventions. They are, therefore, under the obligation to respect and ensure respect of the provisions of the Conventions in all circumstances, irrespective of the nature of the conflict in Somalia, the legality of the use of force, the legal status of troops, or the legal title to the territory.

104. Second, article 147 of the 1949 Fourth Geneva Convention considers the following acts as grave breaches of the Convention. They are:

> "... wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

105. Grave breaches to the Geneva Conventions amount to war crimes. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity specifically proclaims in article 1 that no statutory limitation shall apply to the grave breaches of the four Geneva Conventions.

106. Third, under article 146 of the Fourth Geneva Convention, States must suppress all acts contrary to the Convention, other than the grave breaches. As for the grave breaches, the provision imposes on each High Contracting Party the duty to enact "any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of grave breaches ..." of the Convention. States are also

> "under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."

In other words, States are under a legal obligation to investigate allegations of grave breaches, such as wilful killing and torture, and to bring their perpetrators to justice, irrespective of their nationality, whether by their

national courts or by the courts of another State. It is on this duty that the Independent Expert is focusing with regard to the behaviour of Belgian, Canadian and Italian soldiers in Somalia.

B. Claims against Belgian soldiers

107. In April 1997, Belgium's military court opened an inquiry into the behaviour of a group of its soldiers after a newspaper published pictures of some soldiers holding a Somali youth over a fire and forcing others to eat worms and drink heavily salted water. Little information is available on the proceedings of these trials. The Independent Expert awaits the response of the Government of Belgium.

108. Two years ago, 15 Belgian paratroopers were tried for abuses including torture, killings and mock execution of children. Most were acquitted, but some were convicted and one was jailed for five years.

109. The Independent Expert finds it instructive to draw attention to the conclusion of the Canadian Commission of Inquiry (which will be examined below) that because military justice is often held behind closed doors, Canada opted for a civilian inquiry. The Commission found the military justice system to be inadequate in handling such cases and recommended that military judges be replaced by civilian judges.

C. Claims against Canadian soldiers

110. On 10 December 1997, the Government of Canada responded to the Independent Expert's request of 10 October 1997 for information on the behaviour of the Canadian soldiers in Somalia. The Government submitted to the Independent Expert a volume of material on the work of the Canadian Commission of Inquiry into Deployment of Canadian Forces to Somalia and its July 1997 report, as well as the response of the Ministry of National Defence. The Independent Expert is grateful to the Government of Canada for this comprehensive response and its cooperation.

111. According to the report of the Commission, during the deployment of Canadian troops, events transpired in Somalia that included the shooting of Somali intruders at the Canadian compound in Betet Huen, the beating to death by two Canadian commandos of 16-year-old Somali Shidane Arone, who was caught sneaking into the compound, and an apparent suicide attempt by one of the commandos. In addition, videotapes of "repugnant hazing activities" was also uncovered.

112. On 26 April 1993, the then Minister of National Defence ordered a military board of inquiry. Some soldiers were also court-martialled for their actions in Somalia. The Canadian military also paid the family of Mr. Arone compensation of $15,000, which is the equivalent of 100 camels.

113. Partly because the military board held its sessions in camera, its work was not considered to meet the standard of public accountability. The military board was therefore replaced by a civilian one.

114. The Commission understood its task to be inquiring into and reporting on the "operations, actions and decisions of the Canadian forces and the actions and decisions of the Department of National Defence in respect of the Canadian forces' deployment to Somalia" and in relation to the pre-deployment phase, to examine "the mission and tasks assigned to the Canadian Airborne Regiment Battle Group (CARBG)" and the "effectiveness of the decisions and actions taken by Canadian Forces leadership at all levels to ensure that the CARBG was operationally ready, trained, manned and equipped for its mission and tasks in Somalia" (volume 3 of the report).

115. On 2 July 1997, the Minister of National Defence publicly released, on behalf of the Canadian Government, the report of the Commission of Inquiry entitled "Dishonored Legacy", the 2,000-page report containing text, charts and photos was organized in five volumes. The Commission made 160 recommendations, including

(a) To draft clear rules and criteria for future missions;

(b) To ensure proper planning for the missions;

(c) To improve leadership training;

(d) To reform the military justice system by, inter alia, excluding military police from the chain of command and substituting civilian judges for military judges;

(e) To keep close watch on possible racist influences in the forces; and

(f) To institute a comprehensive system to draw up rules of engagement and the use of force.

116. In its letter to the Independent Expert of 10 December 1997, the Government asserted that the Minister of National Defence of Canada "agreed with most of these recommendations ... (and) that the Department of National Defence has implemented or is planning to implement a large number of changes. These range from amendments to our National Defence Act to naming independent ombudsmen and establishing for a period of two years an independent monitoring committee to report on the process of implementing changes at the Department of National Defence in the Canadian Forces."

117. The report also named 11 officers for leadership shortcomings and failure as commanders. In its letter to the Independent Expert of 10 December 1997, the Government of Canada asserted that

> "Nine Forces members ranging in rank from private to lieutenant-colonel were charged for a variety of offences from murder and torture to negligent performance of military duty. Ultimately, four Forces members were convicted of offences related to the incident in Somalia, three of whom served time in prison. Five members were released from the Canadian Forces and ten others were subject to other administrative career actions."

118. Despite these commendable acts on the part of the Government of Canada, the Independent Expert is concerned about what the report characterized as "considerable difficulty" in conducting the investigation in two major areas. The first concerns the sudden time constraint imposed on the Inquiry which did not allow it to trace the key responsible persons while moving up the chain of command. The report stated:

> "... on January 10, 1997, while Parliament was adjourned, the Minister of National Defence announced that Cabinet had decided that this Inquiry had gone on long enough, that all hearings must be cut off on or about March 31, 1997, and that a report with recommendations was required by June 30, 1997.
>
> "This was the response of the Government to our letter setting out reporting date options and requesting an extension until at least December 31, 1997, a period of time that would have allowed us to conclude our search for the truth ... As our investigation progressed, we were able to move closer to the key centres of responsibility as we moved up the chain of command. Unfortunately, the Minister's decision of January 10, 1997 eliminated any possibility of taking this course to its logical conclusion and prevented us from fully expanding the focus to senior officers throughout the chain of command who were responsible before, during and after the Somalia mission."

119. The second concern relates to what the report described as a "strategy of calculated deception". The report expressed deep concern that

> "... on many occasions the testimony of witnesses was characterized by inconsistency, improbability, implausibility, evasiveness, selective recollection, half-truths, and plain lies. Indeed, on some issues we encountered what can only be described as a wall of silence. When several witnesses behave in this manner, the wall of silence is evidently a strategy of calculated deception.
>
> "Perhaps more troubling is the fact that many of the witnesses who displayed these shortcomings were officers, non-commissioned officers, and senior civil servants - individuals sworn to respect and promote the values of leadership, courage, integrity and acceptability."

120. The Independent Expert welcomes the fact that a civilian Commission of Inquiry was established and congratulates the members of the Commission on highly responsible, thorough and in-depth work. The Independent Expert also greatly values the cooperation of the Government of Canada which transmitted extensive documents to her. The Independent Expert also greatly values the openness of the Canadian society which allowed such an important report to be placed on the Internet. The Independent Expert also appreciates the high level of public concern and attention with which Canadians followed the Inquiry. Such openness and public accountability set positive examples for many other societies to follow.

121. The Independent Expert is concerned, however, that the Inquiry did not fully investigate the allegations of mistreatment of Somalis by Canadian soldiers, including the death of Shidane Arone, and was limited in scope

to only a few issues. The Independent Expert is also concerned that the Government of Canada ordered the Commission to wind up its work earlier than the Commission considered necessary. As a result, the Commission was unfortunately unable to trace properly responsibility up the chain of command. The Independent Expert is also concerned about the inability or unwillingness of several witnesses to tell the truth and about the "wall of silence" that the Commission encountered. The result of these serious shortcomings is that some of those responsible for grave breaches of the Geneva Conventions currently enjoy impunity.

D. Claims against Italian soldiers

122. Two Italian papers published in June 1997 pictures of mistreatment of Somalis at the hands of Italian soldiers, present in Somalia in 1993. Young Somalis were reportedly shown naked, beaten and wired up with electrodes attached to their testicles. Alleged Somali prisoners were shown being hooded and tied up before having cigarette butts stubbed out on their bodies. There were reports that such actions were allegedly widespread and that Somali prisoners were denied food and drink except for hot peppers. On patrols, Italian soldiers vandalized water supplies and destroyed houses if they found even one bullet inside the premises. The allegations went as far as to suggest that at least six Somali civilians were illegally killed by Italian soldiers.

123. On 2 December 1997, the Government of Italy responded to the Independent Expert's letter of 10 October 1997. The Government stated the following:

> "The Italian Government has followed with attention the information published by the press and diffused by the mass media at the beginning of last summer concerning possible human rights abuses committed by troops belonging to Italy and other member States acting under the peacekeeping operation in Somalia. From the beginning the Italian Government made it known that it considers of paramount importance that these allegations should be fully clarified.
>
> "Accordingly, last June the Italian President of the Council of Ministers established a governmental Commission of Inquiry, headed by M. Ettore Gall - a former President of the Constitutional Court - charged to investigate the facts and to report to the Government. Within the Defence Ministry, the Chief of Staff also appointed a commission, headed by General Vannuncchi, charged to investigate and to report.
>
> "The Public Prosecutor of the Republic of Milano, Livorno and Pescara started inquiries into possible crimes committed by Italian troops in Somalia, including rape of women.
>
> "At the moment inquiries are under way at the political, administrative and jurisdictional levels. As soon as the results of the inquiries will be available, the Italian Government will be ready to report to the Independent Expert on the situation of human rights in Somalia of the Commission on Human Rights."

124. The Independent Expert is aware that some human rights groups in Mogadishu are gathering evidence on the behaviour of Italian soldiers in

Somalia at the request of the Government of Italy. The Independent Expert agrees with the Government of Italy that it is imperative that these allegations are fully investigated. She looks forward to receiving further information concerning these investigations and their findings, conclusions and recommendations.

VII. CONCLUSIONS AND RECOMMENDATIONS

125. The Independent Expert reiterates her previous call that the Somali people not be abandoned by the international community. The complexity of the situation in Somalia requires that the political effort to find a durable solution to the Somali conflict be strengthened, and that human rights be placed on the agenda of the political talks regarding the future of Somalia.

126. The Independent Expert calls upon all the Somali warring factions to respect human rights and humanitarian law. The Somali factions are not only bound to respect these principles under international law, these principles are well founded in Somali culture and in Arab, African and Islamic traditions.

127. The Independent Expert considers that it is essential that a nucleus for human rights protection in Somalia starts in Somalia today. However modest the start, the impact on Somalia will certainly be lasting.

128. The Independent Expert also considers that it is fundamental that allegations of abuses committed by the international troops which were present in Somalia from 1992 be fully investigated. The perpetrators of wrongful acts that amount to grave breaches of the Geneva Conventions, and other serious violations of international humanitarian law, must be brought to justice. This is essential not only for the credibility of the international human rights and humanitarian action in Somalia, but also because Somalis must not be taught the wrong lessons about the respect of human rights and humanitarian law.

129. The Independent Expert recommends that a programme of technical cooperation commence in Somalia in the areas proposed in this report:

(a) That human rights advocates groups should be supported;

(b) The Office of the High Commissioner for Human Rights should assist UNDP Somalia in the implementation of its project on legal awareness and the judiciary;

(c) The Office of the High Commissioner for Human Rights should also provide practical assistance to the various United Nations agencies on how to integrate human rights in their work;

(d) Efforts to rehabilitate the militias and create law and order should be fully supported. The Office of the High Commissioner for Human Rights should find ways to support the various law-enforcement training that is taking place in Somalia and to introduce human rights concepts.

130. To carry out this task successfully, the Independent Expert recommends that:

(a) The United Nations should strengthen system-wide coordination in order to devise a strategy for the creation of an infrastructure to promote and protect human rights in Somalia;

(b) As part of the United Nations strategy to make human rights an ongoing activity in Somalia, a permanent human rights officer should be placed in the field. The designated person, who would work within the framework of the Office of the United Nations Resident and Humanitarian Coordinator for Somalia in Nairobi should be accorded appropriate financial and logistical support;

(c) The Commission on Human Rights should continue its consideration of the human rights situation in Somalia with a view to render technical assistance to this troubled country.

Notes

1/ See United Nations Consolidated Inter-Agency Appeal for Somalia, October 1997-December 1997.

2/ Ibid., October 1996-December 1996.

3/ The other country is the United States of America.

4/ Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police. United Nations publications, Sales No. E.96.XIV.5.

5/ T. Pfanner, "Application of international humanitarian law and military operations undertaken under the United Nations Charter", report of a symposium organized by the International Committee of the Red Cross on Humanitarian Action and Peace-Keeping Operations, Geneva, 22-24 June 1993. Geneva, International Committee of the Red Cross, p. 55. The author is the head of the Legal Division of the International Committee of the Red Cross. Common article 1 states:

> The High Contracting Parties underake to respect and ensure respect for the present Convention in all circumstances.

6/ Common article 2 states:

> "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the war is not recognized by one of them.
>
> "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
>
> "Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."